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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 GUILLERMO GUERRERO

Plaintiff,

No. C 18-02379 WHA

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13 COUNTY OF ALAMEDA, ALAMEDA
14 COUNTY SHERIFF'S DEPARTMENT,
15 THE SHERIFF OF THE ALAMEDA
16 COUNTY SHERIFF'S DEPARTMENT,
GREGORY J. AHERN, DEPUTY SHERIFF
G. STEVENS; and DOES 1 through 10,
Inclusive.

**ORDER RE MOTION
TO DISMISS SECOND
AMENDED COMPLAINT**

Defendants.

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INTRODUCTION

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In this excessive-force case, plaintiff filed a second amended complaint pursuant to an order granting leave to amend. Defendants now move to dismiss certain claims in the second amended complaint. For the reasons herein, plaintiff's motion is **DENIED**.

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STATEMENT

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In August 2017, an airport traffic officer issued plaintiff Guillermo Guerrero a ticket for parking in a ten-minute loading zone while waiting to pick up his wife and son from the Oakland International Airport. After plaintiff complained to the traffic officer that he had not

1 parked for more than ten minutes, the officer called over defendant Alameda County Deputy
2 Sheriff G. Stevens. Deputy Stevens asked plaintiff for a “high-five,” then grabbed and twisted
3 plaintiff’s right arm. As a result, plaintiff needed orthopedic surgery, physical therapy, and
4 occupational therapy (Dkt. No. 53 ¶¶ 10–11).

5 In April 2018, plaintiff initiated this action by filing a petition under Section 946.6 of
6 the California Government Code, asking for relief from the statute of limitations governing
7 claims brought under the Government Claims Act. A May 31 order treated the petition as an
8 excessive force claim under Section 1983 of Title 42 of the United States Code and directed
9 plaintiff to promptly serve the summons and a new complaint on all defendants. Defendants
10 Sheriff Ahern and the County of Alameda subsequently moved to dismiss the claims against
11 them (Dkt. Nos. 1, 11, 15).

12 An August 1 order granted Sheriff Ahern’s and the County’s motion to dismiss and
13 gave plaintiff the opportunity to seek leave to amend. In responding to plaintiff’s motion for
14 leave to amend, defendants opposed leave to amend plaintiff’s *Monell* claim for the County’s
15 failure to train, but were silent as to plaintiff’s *Monell* claim based on the County’s official
16 policy, pattern, or practice. A September 24 order accordingly requested that defendants file a
17 supplemental brief clarifying its position. In response, defendants clarified that they did *not*
18 oppose plaintiff’s proposed claim for *Monell* liability based on the County’s official policy,
19 pattern, or practice. After a September 29 order granted in part plaintiff’s motion for leave to
20 amend, plaintiff filed the second amended complaint. The County and Deputy Stevens now
21 move to dismiss certain claims alleged in the second amended complaint (Dkt. Nos. 30, 51,
22 53–54).

23 This order follows full briefing. Pursuant to Civ. L.R. 7-1(b), this order finds the
24 motion suitable for submission without oral argument and hereby VACATES the hearing
25 scheduled for December 13.

26 **ANALYSIS**

27 **1. STATE-LAW CLAIMS.**

28 The August 1 order dismissed plaintiff’s state-law claims for battery, negligence,

1 assault, and violation of Section 52.1 of the California Civil Code against the County and
2 Sheriff Ahern in light of plaintiff's failure to substantially comply with the California
3 Government Claims Act. The operative complaint asserts these claims only against Deputy
4 Stevens, who had yet to appear in this case at the time of the August 1 order. At the Court's
5 invitation, Deputy Stevens now moves to dismiss the state-law claims asserted against him for
6 the same reasons those claims were dismissed as to Sheriff Ahern and the County. Plaintiff
7 does not oppose Deputy Steven's motion to dismiss these claims and it is accordingly
8 **GRANTED.**

9 **2. *MONELL CLAIM.***

10 Plaintiff's sixth claim for relief asserts a *Monell* claim based on the theory that the
11 County's official policy, pattern, or practice caused the deprivation of plaintiff's constitutional
12 rights. After a request for clarification, defendants emphatically represented that they did not
13 oppose plaintiff's request to include this claim in his second amended complaint. They cannot
14 now raise the issue in a subsequent FRCP 12(b)(6) motion to dismiss. Defendants' motion to
15 dismiss plaintiff's *Monell* claim is **DENIED**.

16 **CONCLUSION**

17 For the foregoing reasons, defendants' motion to dismiss is **GRANTED IN PART AND**
18 **DENIED IN PART.** The December 13 hearing is hereby **VACATED**. There shall be no further
19 FRCP 12 motion practice.

21 **IT IS SO ORDERED.**

23 Dated: December 6, 2018.

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25 **WILLIAM ALSUP**
26 **UNITED STATES DISTRICT JUDGE**

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